

## Message Text

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 CIAE-00 PM-05 INR-07 ACDA-12  
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AMEMBASSY LONDON  
CINCUSAFE RAMSTEIN AB GER  
USNMR SHAPE BE  
AMEMBASSY THE HAGUE  
USCINCEUR VAIHINGEN GER

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STATE FOR L/SFP, 32ND TFS FOR NL/JA, USAREUR FOR  
AEAJA/IA, USAFE FOR JACI

E.O. 11652: N/A  
TAGS: MARR NATO  
SUBJECT: AD HOC COMMITTEE ON TAX EXEMPTION OF MILITARY  
HEADQUARTERS AND PERSONNEL - REVISION TO PARTS I AND II  
OF DRAFT REPORT TO COUNCIL  
FOLLOWING IS A NEW VERSION OF PARTS I AND II OF THE  
DRAFT REPORT TO THE COUNCIL CONCERNING THE COMMITTEE'S  
STUDY ON TAX EXEMPTION. THE REVISION TAKES ACCOUNT OF  
THE AMENDMENTS PROPOSED AT THE AD HOC COMMITTEE'S MEET-  
ING ON 2 DECEMBER 1977.

BEGIN TEXT:

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### I. TERMS OF REFERENCE

1. AT ITS MEETING ON 3RD JUNE 1977, THE COUNCIL DECIDED  
THAT AN AD HOC COMMITTEE CONSISTING OF EXPERTS NOMINATED  
BY DELEGATIONS, WITH THE ASSISTANCE OF THE NATO LEGAL  
ADVISER, WOULD TRY TO CLARIFY ARTICLE X OF THE AGREEMENT  
ON THE STATUS OF FORCES (LONDON 1951) AND ARTICLE VIII

OF THE PROTOCOL ON THE STATUS OF HEADQUARTERS (PARIS 1952) (SEE C-R(77)24 OF 16 JUNE 77 AND PO/77/67 OF 28 APRIL 1977).

2. THE AD HOC COMMITTEE ELECTED THE NATO LEGAL ADVISER AS CHAIRMAN. BASING ITSELF ON PARAGRAPH 7 OF THE ABOVE-MENTIONED PO/77/67, THE AD HOC COMMITTEE HAS SPECIFIED THAT IT SHOULD DEFINE:

. (A) THE DISTINCTION BETWEEN "DUTIES AND TAXES" AND "CHARGES FOR SERVICES RENDERED" (ARTICLE VIII OF THE PROTOCOL);

. (B) THE EXACT MEANING OF "FORM OF TAXATION (DEPENDENT) UPON RESIDENCE OR DOMICILE" (ARTICLE X OF THE AGREEMENT).

## II. ARTICLE VIII OF THE PARIS PROTOCOL

3. IN THIS ARTICLE, WHICH CONCERNS THE SYSTEM OF TAX EXEMPTION OF HEADQUARTERS, PARAGRAPHS 1 AND 4 READ AS FOLLOWS:

. "1. FOR THE PURPOSE OF FACILITATING THE ESTABLISHMENT, CONSTRUCTION, MAINTENANCE AND OPERATION OF ALLIED HEADQUARTERS THESE HEADQUARTERS SHALL BE RELIEVED, SO UNCLASSIFIED

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FAR AS PRACTICABLE, FROM DUTIES AND TAXES, AFFECTING EXPENDITURES BY THEM IN THE INTEREST OF COMMON DEFENSE AND FOR THEIR OFFICIAL AND EXCLUSIVE BENEFIT, AND EACH PARTY TO THE PRESENT PROTOCOL SHALL ENTER INTO NEGOTIATIONS WITH ANY ALLIED HEADQUARTERS OPERATING IN ITS TERRITORY FOR THE PURPOSE OF CONCLUDING AN AGREEMENT TO GIVE EFFECT TO THIS PROVISION.

. "4. THE EXPRESSION 'DUTIES AND TAXES' IN THIS ARTICLE DOES NOT INCLUDE CHARGES FOR SERVICES RENDERED."

4. THE COMMITTEE NOTED, FIRSTLY, THE FLEXIBLE LANGUAGE OF THE FIRST PARAGRAPH OF ARTICLE VIII. THE PHRASE "SO FAR AS PRACTICABLE", FOR EXAMPLE, INDICATES THAT MEMBER COUNTRIES HAVE SOME LATITUDE AS REGARDS ASSESSMENT. ALSO, THE REFERENCE TO NEGOTIATIONS AND THE CONCLUSION OF BILATERAL AGREEMENTS BETWEEN HEADQUARTERS AND HOST COUNTRIES SIGNIFIES THAT ONLY SUCH AGREEMENTS CAN SPELL OUT THE TRUE MEANING AND SCOPE OF ARTICLE VIII. AN ABSTRACT INTERPRETATION OF ARTICLE VIII IS NOT SUFFICIENT TO ASSIST IN FINDING SOLUTIONS TO PARTICULAR TAX PROBLEMS SUCH AS THE QUESTION WHETHER HEADQUARTERS OUGHT OR OUGHT

NOT TO BE EXEMPTED FROM THE WATER POLLUTION LEVY IN THE  
NETHERLANDS.

. SHOULD NEW TAXES, NOT PROVIDED FOR IN THE BILATERAL  
AGREEMENTS, BE INTRODUCED, THE QUESTION OF TAX EXEMPTION  
OR APPLICATION SHOULD BE DECIDED BY NEGOTIATIONS BETWEEN  
THE MEMBER COUNTRIES AND THE HEADQUARTERS CONCERNED IN  
THE FRAMEWORK OF ARTICLE VIII.

. SUCH ADJUSTMENT IS IN ANY CASE EXPRESSLY PROVIDED

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FOR IN SEVERAL OF THE AGREEMENTS IN FORCE.

5. AS REGARDS THE MEANING OF "CHARGES FOR SERVICES  
RENDERED", ITS EXACT SCOPE IS HARD TO DEFINE BECAUSE OF  
THE VARIED AND VARIABLE APPROACH ADOPTED BY THE DIFFERENT  
COUNTRIES' LEGISLATION. THUS, THE METHOD OF TAXATION  
MAY RESULT IN THE SUMS DEMANDED OF A TAXPAYER SOMETIMES  
INCLUDING BOTH A TAX PROPER AND THE COST OF A SERVICE  
RENDERED. THESE TWO ELEMENTS THEN CONSTITUTE AN INDIVISI-  
BLE WHOLE.

. THE AD HOC COMMITTEE CONSIDERED THAT SHOULD DEFINI-

TIONS NONETHELESS HAVE TO BE GIVEN THEY SHOULD BE COUCHED  
ONLY IN GENERAL TERMS, FOR EXAMPLE:

. - TAXES ARE MONETARY PAYMENTS WHICH ARE NOT  
REIMBURSEMENTS FOR SERVICES REQUESTED AND RECEIVED; THEY  
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ARE IMPOSED BY OR ON BEHALF OF A GOVERNMENTAL ENTITY FOR  
THE PURPOSE OF PRODUCING REVENUE;

. - PUBLIC FEES OR CHARGES ARE AMOUNTS WHICH ARE  
PAYABLE IN RETURN FOR A SPECIFIC SERVICE, REQUESTED AND  
RECEIVED BY IMH OR ANOTHER NATO MEMBER. THEY MUST BE IN  
DIRECT RELATION TO, AND REPRESENT REASONABLE PAYMENT  
FOR, SUCH SERVICE FOR WHICH CHARGES ARE MADE, OR FEES  
IMPOSED.

6. MOREOVER, IT WAS STRESSED THAT THE GENERAL INTEREST  
OF COMMON DEFENSE SHOULD BE A BASIC PRINCIPLE FOR DETER-  
MINING THE HEADQUARTERS' EXEMPTION FROM SOME TAXES.

IN ANY CASE, THE TAXES CHARGED TO A HEADQUARTERS  
REPRESENT BUDGETARY EXPENSES WHICH IN THE FINAL ANALYSIS  
MUST BE BORNE BY THE MEMBER COUNTRIES.

7. THIS BEING SO, THE AD HOC COMMITTEE FELT THAT IT  
WAS DESIRABLE FOR GOVERNMENTS TO APPLY EQUIVALENT CRITERIA  
WHEN IMPOSING TAXES ON A HEADQUARTERS.

END TEXT.

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## Message Attributes

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